Supreme Court, U.S.
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No. 97-1349

In The

# Supreme Court of the United States

October Term, 1997

ANA MARIA PAINTER,

*Petitioner,*

v.

GOLDEN RULE INSURANCE COMPANY,

*Respondent.*

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

## RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner Ana Maria Painter has filed a "Supplemental and Reply Memorandum" in support of her Petition for Certiorari. The purported reason for the additional Brief is this Court's recent decision in *Rivet v. Regions Bank of Louisiana*, 66 U.S.L.W. 4132 (1998). There is, however, no support in *Rivet* for Painter's position.

Respondent Golden Rule submits this Supplemental Brief, in accordance with Sup. Ct. R. 15.2, to respond to the inaccuracies contained in Painter's latest Brief.

As Golden Rule pointed out in its previous Brief, Painter ignores the fact that Golden Rule removed this case on the alternative bases of federal question jurisdiction and diversity jurisdiction. In other words, if the federal question basis for removal jurisdiction had not been valid, there nevertheless would have been diversity removal jurisdiction for this case. *See, e.g., Alexander v. Electronic Data Systems Corp.*, 13 F.3d 940, 949 (6th Cir. 1994) (there being no federal question jurisdiction, court of appeals remanded for a determination whether grounds existed for diversity jurisdiction); *Hurt v. Dow Chemical Co.*, 963 F.2d 1142, 1144-45 (8th Cir. 1992) (in the absence of federal question removal jurisdiction, court analyzed whether diversity removal jurisdiction existed).

Because this case was removed on two separate grounds, this case is easily distinguished from the *Rivet* case and the other cases cited by Painter. The cases cited by Painter involved only issues of federal question removal jurisdiction. The Eighth Circuit below referred to

"conflict preemption" only as the basis for holding that Painter's purported state law claims were preempted. Removal jurisdiction was not an issue. Contrary to Painter's assertion, the Eighth Circuit is not "in disagreement" with the decisions cited by Painter.

As Golden Rule also pointed out in its previous Brief, Painter never filed any motion to remand this case to state court. In apparent recognition of the fact that removal was proper, regardless of ERISA preemption, Painter did not seek remand. Painter should not be allowed to seek a remand now from this Court.

Finally, Painter twice asserts that the courts below held that she had pled no ERISA cause of action. The lower courts did not actually consider that issue because Painter chose not to amend her complaint and never attempted to state any ERISA cause of action. *See Painter v. Golden Rule Ins. Co.*, 121 F.3d 436, 441 (8th Cir. 1997) (because Painter did not attempt to amend, both the district court and the Eighth Circuit declined to order her to do so).

## CONCLUSION

For the foregoing reasons, and for the reasons stated in its previously-submitted Brief, respondent Golden Rule Insurance Company respectfully requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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